

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
International Travel Brokers, Inc. : AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of Corporation :  
Franchise Tax under Article 9A & 27 of the Tax Law :  
for the Fiscal Year Ended 6/30/74.

State of New York  
County of Albany

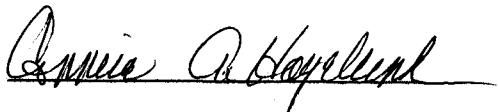
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 26th day of March, 1982, he served the within notice of Decision by certified mail upon International Travel Brokers, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

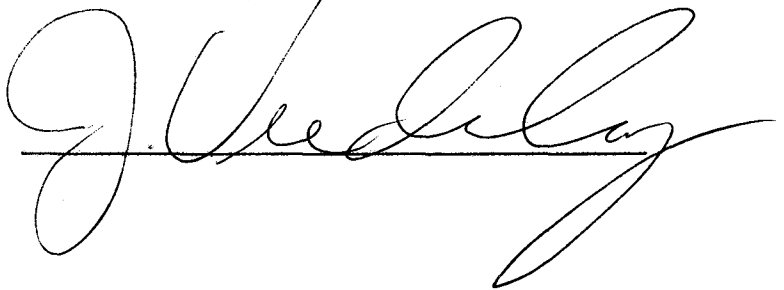
International Travel Brokers, Inc.  
11 Grace Ave.  
P.O. Box 806  
Great Neck, NY 11021

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this  
26th day of March, 1982.





STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
International Travel Brokers, Inc. : AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :  
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for the Fiscal Year Ended 6/30/74.

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State of New York  
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 26th day of March, 1982, he served the within notice of Decision by certified mail upon Irwin Sturz the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Irwin Sturz  
Louis Sturz & Co.  
New York, NY

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this  
26th day of March, 1982.

Conrad R. Hegeland

J. Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION  
ALBANY, NEW YORK 12227

March 26, 1982

International Travel Brokers, Inc.  
11 Grace Ave.  
P.O. Box 806  
Great Neck, NY 11021

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance  
Law Bureau - Litigation Unit  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Irwin Sturz  
Louis Sturz & Co.  
9 East 40th Street  
New York, NY  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
INTERNATIONAL TRAVEL BROKERS, INC.	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Corporation Franchise Tax under	:	
Articles 9A and 27 of the Tax Law for the	:	
Fiscal Year Ended June 30, 1974.	:	

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Petitioner, International Travel Brokers, Inc., 11 Grace Avenue, P.O. Box 806, Great Neck, New York 11021, filed a petition for redetermination of a deficiency or for refund of Corporation Franchise Tax under Articles 9A and 27 of the Tax Law for the fiscal year ended June 30, 1974. (File No. 31097).

A formal hearing was held before Robert A. Couze, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on August 6, 1981 at 3:00 P.M. Petitioner appeared by Louis Sturz & Co. (Irwin Sturz, CPA). The Audit Division appeared by Ralph J. Vecchio, Esq., (Paul A. Lefebvre, Esq., of counsel).

ISSUES

I. Whether petitioner may change the percentage of its income allocable to New York State for Corporation Franchise Tax purposes.

II. Whether petitioner may properly claim a refund of additional Corporation Franchise Tax paid in 1978.

FINDINGS OF FACT

1. At the hearing, counsel for the parties agreed that the issue should be decided on the jurisdictional papers, especially the petition and the answer.

2. Petitioner reported 100 percent allocation to New York on all of the Corporation Franchise Tax Reports in issue. The tax reports are for the year ended June 30, 1974.

3. In November of 1978, petitioner filed a Report of Change in Taxable Income By U.S. Treasury Department (Form CT-3360) and paid an additional tax of \$4,833.90 for the year ended June 30, 1974 plus interest of \$1,510.59. This was based on a disallowance by the Internal Revenue Service.

4. During the year 1979, it was determined that petitioner was doing business in the State of Hawaii during the fiscal year ended June 30, 1974 and a tax was paid to the State of Hawaii.

5. In December, 1979 petitioner filed a claim for refund (Form CT-8) in the amount of \$41,783.54. This claim was based on a reallocation of petitioner's income for the year ended June 30, 1974, between the states of New York and Hawaii. Petitioner was advised by the New York State Department of Taxation and Finance, by letter dated July 30, 1980, that the claim for the period ended June 30, 1974 was disallowed because it was not filed within three years from the time the report was due or two years from the date the tax was paid.

6. On September 18, 1980, petitioner filed the petition herein demanding a refund of \$6,343.58. This sum represents the additional tax paid in November 1978. (See Finding of Fact "3" above)

#### CONCLUSIONS OF LAW

A. That section 1083(c)(7) of the Tax Law provides in pertinent part:

"Change of the allocation of taxpayer's income or capital. - No change of the allocation of income or capital upon which the taxpayer's return (or any additional assessment) was based shall be made where an assessment of tax is made during the additional period of limitation under ... paragraph (3)..."

B. That the "additional period of limitation under paragraph (3)" referred to above is the period applicable, (as herein), in the case of changed or corrected federal income. [Tax Law Section 1083(c)(3)]

C. That since petitioner allocated 100 percent of its income to New York on its original filing and did not timely amend such allocation, it is precluded from changing such allocation on its November 1978 filing.

D. That since petitioner was bound to allocate 100 percent of its income to New York, any increase in such income due to the federal disallowance (see Finding of Fact "3") was properly allocable to New York. Therefore, petitioner is precluded from claiming a refund of the additional Corporation Franchise Tax it paid to New York in November 1978 on the basis of the federal disallowance.

E. That the petition of International Travel Brokers. Inc. is hereby denied.

DATED: Albany, New York  
MAR 26 1982

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER